IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 296 of 1995

LAXMAN & ORS
V/S
STATE & ORS

Mr. MS SINGHVI, for the appellant / petitioner

Mr. KC SAMDARIYA & Mr. OP BOOB, A.G.A., for the respondent

Date of Order : 2.5.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

The petitioners by this petition seek to challenge the orders dt. 21.9.1992, 13.4.1994, and 22.11.1991 being Annexures 4 to 9, and have also prayed for a restrain against interference in their possession.

The facts of the case, as pleaded in the writ petition are, that the petitioners were the owners of the land measuring 12 Bighas, which stood in their name as detailed in Schedule-A. It is a different story that I do not find any such schedule available on record, as in the index schedule it is shown to exist between page no. 15 and 16, while on record there is no paper available in between the aforesaid two pages. Be that as it may.

The averments thereafter are, that the land was

acquired by the State Government in the year 1962, as it was proposed to construct a dam. However, only part of the land so acquired came to be used for the dam, and major portion was left behind. The petitioners then moved application to Patwari, for restoring the land so left out, whereupon a report came to be made, and on the basis of the report, orders dt. 6.5.1983 came to be passed, whereby the land, which did not come under the dam, was restored back in favour of the petitioners. According to the petitioners since the land which was allotted to the petitioners in lieu of the land acquired, was Barani land, therefore, the land which was acquired was restored back in their favour. Accordingly land was mutated, and entries were made in Jamabandi. Against these orders of Tehsildar, a reference was made to the Board of Revenue, vide orders dt. 22.11.1991, being Annexures 4 to 6. It is alleged, that the main argument for reference was, that the Government had issued specific orders vide order dt. 10.2.1982 regarding use of the acquired land for irrigation purposes, while the possession has been restored in contravention of the said direction. The Board of Revenue accepted the reference, and directed that the land in question could be/should be allotted in accordance with the prevalent instructions. These orders of the Board of Revenue have been produced as Annexure-7 and 8. The petitioners filed a review petition, and the same has been rejected vide order Annexure-9. It is alleged that the petitioners' land was acquired, and in

lieu of that, land was given to the petitioners, and certain amount was also paid towards the cost of the well, situated on the lands so acquired, and that as the land was not used for the purpose for which it was acquired, the petitioners were entitled to get the possession, and Khatedari rights, and accordingly when the possession was restored, the compensation paid to the petitioners was returned, which was accepted by the State, the order of restoration was perfectly justified. It is also contended that once the land has been acquired for a particular purpose, and the land is not put to use for the said purpose, then it has to be de-acquired, as per the provisions of the Land Acquisition Act, therefore, the restoration of possession is contended to be valid. Then, it is pleaded that the order of Tehsildar dt. 6.12.1983 was appealable, and therefore, after expiry of period of filing appeal, reference power could not be exercised. Interalia with these averments the aforesaid relief has been claimed.

Arguing the writ petition these very submissions were reiterated, and it was contended, that reference has been made after a long period of time being nine years, and is, therefore, unreasonably delayed.

Mr. Samdariya appearing for private respondents contended, that the land was originally of the Khatedari of the temple, and could not be restored to the petitioners,

it was not acquired from the private respondents, who are continuing in possession, and the private respondents have already filed a suit before the competent revenue court, wherefrom temporary injunction has been granted.

I have considered the submissions.

A look at Annexure-1 shows, that it clearly recites, that from perusal of the mutation no. 204, it is clear, that the land was given to the petitioners in village Aakarsada by way of compensation, and cash compensation was paid for the well, which has been re-deposited back, and therefore, the land was ordered to be restored to the Khatedari of the petitioners. Thus, it is clear that the land was acquired, and possession was taken from the petitioners, and compensation in cash and kind was also given, which was duly accepted by the petitioners. That being the position, a look at the provisions of Section 48 of the Land Acquisition Act shows, that after all this has been done, the land cannot be de-acquired, inasmuch as thereunder the Government is at liberty to withdraw from the acquisition of any land "<u>of which possession has not been taken</u>". While admittedly possession had not only been taken, alternate land has also been allotted to the petitioners, and that was also mutated in their name. In this view of the matter, it cannot be accepted, that since the land was not used for the purpose

for which it was acquired, it was required to be de-acquired, or was required to be restored to the possession of the petitioners.

Then, it is significant to note, that vide order of this court dt. 10.3.1995, the petitioner was specifically directed to produce the copy of the order dt. 21.10.67 so also copy of Govt. order of the year 1982, whereby the Tehsildars were specifically restrained from restoring the khatedari rights to persons whose land has been acquired, and in compliance of that order the petitioner has produced Annexure-11, and a look thereat shows, that this is an order issued by the State Government to all the Collectors, directing that such lands which do not get submerged or re-emerges on recession of water, could be allotted by the Revenue Department only, under the Rajasthan Land Revenue (Allotment of Tank Bed Lands for Cultivation) Rules, 1961, and it was also directed, that all such land shall remain in possession of the Revenue Department. Thus it is clear, that such land, which is either not used for the purpose for which it is acquired being for irrigation purposes, or the land does not get submerged, or re-emerges due to recession of water, shall remain the Government land, capable of being allotted under the Tank Bed Rules, 1961. Obviously, therefore, the restoration of the land to the petitioners vide Annexure-1 was ex-facie bad.

In that view of the matter, I take up the argument of the learned counsel for the petitioner, about the reference being unreasonably delayed. The argument was made on the basis that Annexure-1 is of the year 1983, while the orders Annexure 4 to 6 are of 1991. But then, it would suffice to say, that Annexures 4 to 6 are the decisions, given in the reference proceedings, which had been initiated way back in the year 1987 itself. Obviously looking to the nature of the controversy involved, and the way the order Annexure-1 has been passed, this much delay in initiating reference proceedings, in my view, cannot be said to be such an unreasonable delay, so as to require interference by this Court, in writ jurisdiction. In my view on the face of Annexure-11, read with the provisions of Section 48 of the Land Acquisition Act, the allotments made vide Annexures 1 and 2 can possibly not stand, and have rightly been set aside by the impugned orders Annexures-7 and 8. It is required to be grasped, that once the land is acquired in accordance with the provisions of the Land Acquisition Act, the land vests in the State Government free from all encumbrances, and no Khatedari rights survive, capable of being restored, of course, including the situation covered by Section 48 of the Land Acquisition Act.

In view of the above, now I may deal with the

submissions made by Mr. Samdariya. Suffice it to say, that acquisition proceedings were taken in the year 1962, and compensation was paid in cash and kind to the petitioners. Obviously the land is acquired by issuing notifications, which were published in the official gazette, local news papers, and were also locally published, including being pasted at conspicuous places. In such circumstances, if the private respondents had any claim, it was required to be agitated at that time, and in any case after the award was made, and compensation was paid, they could have sought remedy available under Section 30 of the Land Acquisition Act, which provides for deciding the question, about the person entitled to receive the compensation. Admittedly no such steps have been taken. In that view of the matter, he cannot be allowed to urge, that since the land acquired belongs to him, it could not be restored to the petitioners. It is a different story, that private respondents have also not challenged Annexures-1 and 2. So far as the suit is concerned, a look thereat, a certified copy whereof is available on record, shows, that all that has been prayed therein is as under:-

> "11- अत: प्रार्थना की जाती है कि वादी नृसिंहजी महाराज खातेदार स्थान देह पाटन का महन्त रामकृष्णदास को पुजारी एवं व्यवस्थापक घोषित किया जावे। उपरोक्त कथन के समर्थन में ग्राम वासियान व पटवारी एवं तहसीलदार तथा स्थानीय विधायक की तस्दीक भी सलंग्न है।"

Suffice it to say, that in the entire suit there

is not even a whisper about the land having been acquired, rather the allegation is, that the present petitioners had forcibly taken possession of the land, against which proceedings were taken, and the Board of Revenue, vide judgment dt. 21.9.1992 had set aside the mutations, and dispossessed them, and directed the plaintiff to be heard after being made a party. Suffice it to say that there are no such directions given in the orders Annexures-6, 7, 8, or 9 to hear the plaintiff, or to pass fresh order after hearing both the parties. It is with this pleading that above relief had been claimed. It is not for me at this stage to observe as to whether such a suit is maintainable, or not, or is cognizable by Revenue Court, or not. However, for present purposes, it would suffice to say, that the private respondents can hardly be heard in this writ petition, to claim any right in the land.

A prayer was made by the learned counsel for the petitioner, that since vide Annexure-1 the land has been allotted to them, it may be directed to be treated as allotment under the Tank Bed Rules. I am afraid, this request cannot be accepted, as the procedure for allotment, and purpose of allotment under the Tank Bed Rules is entirely different, as compared to the other allotments under the Rules of 1970, being Rajasthan Land Revenue (Allotment of Land for Agricultural Purposes), Rules 1970. However, all that can be observed is, that in case the

petitioners also apply for allotment of the land, under the Tank Bed Rules, as directed by the impugned order, read with Annexure-11, in the event of all other things being equal, the petitioners may be preferred.

Thus, I do not find any force in the writ petition. The same is, therefore, dismissed with the aforesaid observations.

(N P GUPTA),J.

/Sushil/